DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH Petitioner, v. ECONOMIDES DEVELOPMENT and FRANK ECONOMIDES Respondents	Case No.: I-02-12061

FINAL ORDER

I. Introduction

On July 2, 2002, the Government served a Notice of Infraction on Respondents Economides Development and Frank Economides, alleging that they violated 21 DCMR 502.1, by failing to obtain a permit before engaging in land disturbing activities, and 21 DCMR 539.4, by failing to have adequate erosion control measures in place before and during exposure. The Notice of Infraction alleged that the violations occurred on June 4, 2002 at 4825 Dexter Terrace, N.W. The Government sought a fine of $500 for the § 502.1 violation and a fine of $100 for the § 539.4 violation.

Respondents filed a timely answer with a plea of Deny, and I issued an order setting a hearing on September 19, 2002 at 9:30 AM. Peter Nwangu, the inspector who issued the Notice of Infraction, appeared at the hearing on behalf of the Government. There was no appearance for Respondents. After waiting for approximately fifteen minutes, the deputy clerk telephoned Mr. Economides, who told her that he thought the hearing was scheduled for September 20, and requested a continuance, as he obviously would not be able to appear for the scheduled hearing.

The Civil Infractions Act, D.C. Official Code § 2-1802.03(b), provides:

> If a respondent fails, without good cause, to appear at a hearing of which the respondent has been served a notice, the administrative law judge or attorney examiner may proceed with the hearing and enter a final order in the case.

If a party receives proper notice of a hearing date, his or her mistake about the date of the hearing does not constitute "good cause" for failing to appear. *Gardner v. District of Columbia Department of Employment Servs.,* 736 A.2d 1012 (D.C. 1999). The Case Management Order, filed July 30 2002, informs Respondents that the hearing was "scheduled for September 19, 2002 at 9:30 AM" (underlining in original). Setting a new hearing date would inconvenience both the Government and this administrative court and Respondents' carelessness is an insufficient reason for imposing such inconveniences. "[C]ontinuances can upset an agency's attempts to control its workload and to dispose of the cases before it expeditiously." *Ammerman v. District of Columbia Rental Accommodations Comm.,* 375 A.2d 1060, 1063 (D.C. 1977) (footnote omitted). Accordingly, I exercised the discretion granted by § 2-1802.03(b) to proceed with the hearing in Respondents' absence.

Based upon the testimony of the Government's witness, my evaluation of his credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

On June 4, 2002, Mr. Nwangu inspected the property at 4825 Dexter Terrace, N.W. in response to a complaint. The property is occupied by a detached, single-family house. The rear of the property slopes downward toward a stream. Several large trees had been cut down on the property, and Mr. Nwangu observed a large pile of dirt on the property. Respondent Frank

Economides, a principal in Respondent Economides Development, was present during Mr. Nwangu's inspection, and admitted to Mr. Nwangu that he had arranged for truckloads of dirt to be brought to the property. There were no erosion control measures, such as silt fences, straw bales or plastic covering on the dirt, to prevent erosion of the dirt from the pile into the nearby stream. Mr. Nwangu subsequently checked with the records custodians at the Department of Consumer and Regulatory Affairs, and determined that no building permit had been issued authorizing the deposit of dirt at the property.

III. Conclusions of Law

The first rule at issue is 21 DCMR 502.1, which provides:

> No person may engage in any land disturbing activity on any property within the District unless that person has secured a building permit from the District. Approval of a building permit shall be conditioned upon submission by the permit applicant of an erosion and sedimentation plan which has been reviewed and approved by the Department.

The definition of "land disturbing activity" includes "filling of land," 21 DCMR 599.1. In turn, "landfilling" (the equivalent of "filling of land") is defined as "any act by which soil is deposited, placed or pushed, where it had not previously been located." *Id.* Therefore, depositing a pile of soil at a property is "land disturbing activity" within the meaning of § 502.1, and must be authorized by a building permit. *DOH v. Keen,* OAH No. I-00-10183 at 3 (Final Order, June 5, 2001); *DOH v. Sheriff Mews* ("*Sheriff Mews I")* OAH No. I-00-10009 at 6 (Final Order, September 8, 2000). Because Respondents did not have such a permit, they violated § 502.1 by arranging for the deposit of the pile of dirt at the property. The fine for violating § 502.1 is $500 for a first offense. 16 DCMR 3234.1(a); 16 DCMR 3201. I will impose a fine in that amount.

The second rule at issue is 21 DCMR 539.4, which provides:

> Adequate erosion control measures shall be in place prior to and during the time of exposure.

This section requires appropriate erosion control measures to be in place before erodible materials are exposed to the elements. *See also* 21 DCMR 539.1. ("Erosion and sediment control measures shall be applied to erodible material exposed by any project activity.") Because there were no erosion controls in place to prevent the dirt from being washed into the nearby stream, Respondents violated § 539.4. Pursuant to 16 DCMR 3234.2(y), and 16 DCMR 3201, the fine for a first violation of that rule is $100, and I will impose a fine in that amount.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **SIX HUNDRED DOLLARS ($600)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 02/12/03

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John P. Dean
Administrative Judge